TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 332.

ADAMS EXPRESS COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED JUNE 29, 1906.

(20,297.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 8, 1907.

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Pleas before the Honorable the Court of Appeals of Kentucky, at the Capitol, in the City of Frankfort, on the 27th day of April, 1906.

ADAMS EXPRESS COMPANY, Appellant,
vs.
COMMONWEALTH, Appellee.

Appeal from Knox Circuit Court.

Be it remembered that heretofore, to-wit: on the 6th day of May, 1905, the appellant by its attorney filed in the Clerk's office of the Court of Appeals of Kentucky a transcript of record, in words and figures as follows, to-wit:

Knox Circuit Court.

#1835.

COMMONWEALTH OF KENTUCKY
vs.
ADAMS EXPRESS COMPANY.

Schedule.

The Clerk will copy the indictment, all the orders in the case, the motion and grounds for a new trial, and this schedule.

ADAMS EXPRESS COMPANY,
By C. W. METCALF, *Attorney.*

2 Pleas before the Honorable H. C. Faulkner, Judge of the Knox Circuit Court, at the court house thereof, in the town of Barbourville, Kentucky, on the 11th day of April, 1905.

Be it remembered that on December 27th, 1904, the following indictments were returned by the Knox county grand jury, to-wit:

Knox Circuit Court, December Term, 1904.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, J. A. OWENS, and WILLIAM DEDDEN, Defendants.

Indictment.

The grand jury of Knox county, in the name and by the authority of the Commonwealth of Kentucky, accuse J. A. Owens, William Dedden and the Adams Express Company, the latter being

a joint stock company and partnership engaged in and
3 doing business as a carrier under the firm name and style of Adams Express Company, of the offense of unlawfully selling, giving, loaning, procuring for and furnishing intoxicating, spirituous, vinous and malt liquors, and a mixture thereof, committed in manner and form as follows, viz: The said J. A. Owens, William Dedden and Adams Express Company, the latter being a joint stock company and partnership engaged in carrying on the business of a carrier of packages, goods, wares and merchandise by the method commonly known as express, the individuals comprising said firm and partnership company are to the grand jury unknown, but some or all of them are non-residents of this State, did in Knox county, Kentucky, on the 27th day of December, 1904, unlawfully and wilfully carry for and deliver to J. D. Main a parcel, package, shipment and quantity of intoxicating, spirituous, vinous and malt liquors, and the mixture thereof, less than five gallons, to be and which was paid for on delivery at Barbourville in said Knox county, same being at the time a shipment commonly known and called "C. O. D. Shipment," in violation of the provisions of an act of the General Assembly of the Commonwealth of Kentucky, prohibiting the sale of intoxicating, spirituous, vinous and malt liquors,
4 and the mixtures thereof, in quantities less than ten gallons in the counties of Knox and Whitley, approved April 15th, 1884, and in violation of the provisions of an act approved May 7th, 1886, and in violation of the provisions of an act approved March 10th, 1894, and in violation of the provisions of an act approved March 11th, 1902, said acts being known as the local option laws, and being in full force and effect in Knox county at the aforesaid place of Barbourville, the place of delivery aforesaid. The said J. D. Main paid to the said J. A. Owens the money for said liquor and shipment, the said J. A. Owens being at the time he accepted pay for and delivered same acting for said William Dedden and Adams Express Company as agent and in charge and control of the office of said Adams Express Company at Barbourville in said county, said shipment and delivery being made and done at the time by said J. A. Owens, William Dedden and Adams Express Company in the usual course of business of said Adams Express Company.

The place from which said shipment was made as aforesaid, and the name of the owner of said liquors and shipment for whom same was carried and delivered as aforesaid, are unknown to this grand jury, but same was a place other than Barbourville, Knox
5 county, Kentucky. Against the peace and dignity of the Commonwealth of Kentucky.

(Signed) WM. LEWIS,
Commonwealth's Attorney, 27th Judicial District of Kentucky.

Indorsement.

A True Bill,
C. N. SAMPSON, *Foreman.*

Received from the hands of the foreman of the grand jury and filed in open court. December 27th, 1904.

J. R. JONES, *Clerk.*

The Commonwealth of Kentucky; the Sheriff, Coroner, Jailer, Marshal, or Policeman of Kentucky, Greeting:

You are commanded to summon J. A. Owens, Wm. Dedden and Adams Express Company to appear in the Knox Circuit Court on the first day of its next April Term to answer an indictment for selling liquor found against them in that court.

Given under my hand, as clerk of said court, this 10th day of Feb'y, 1905.

J. R. JONES, *Clerk.*

6 *Returns.*

Executed May 28th, 1905, on Adams Express Company by delivering a true copy of summons to J. A. Owens, agent at B'ville; executed on J. A. Owens by delivering a true copy, Wm. Dedden not in Knox county.

W. W. BYRELY, *S. K. C.*
CHAS. BYRELY, *D. S.*

Knox Circuit Court, April Term, April 11th, 1905.

THE COMMONWEALTH OF KY., Pl'ff,
vs.
J. A. OWENS and J. A. CONNELL and J. O. OWENS and WILLIAM DEDDEN, Def'ts.

Liquor.

By agreement between Wm. Lewis on behalf of the Commonwealth, and C. W. Metcalf, attorney for Adams Express Company, etc., defendants:

It is admitted by the parties plaintiff and defendants that the packages of spirituous, vinous and malt liquors about which the indictment was made in this —, was received by the defendant Adams Ex-
7 press Company in Cincinnati, Ohio, in the usual course of business, and this fact is admitted in the trial of the above styled case without further proof of said fact.

Knox Circuit Court, April Term, April 11th, 1905.

THE COMMONWEALTH, Pl'ff,
vs.
ADAMS EXPRESS COMPANY, J. A. OWENS, WM. DEDDEN, Def'ts.

Liquor.

Judgment.

Came the parties and answered ready for trial. The defendant Adams Express Company by attorney produced and filed a demurrer

to the Indictment. The court having considered the said demurrer, and being sufficiently advised, overrules the said demurrer, to which ruling of the court the defendant Adams Express Company excep's. By agreement of pl'ff and def't Adams Express Company the court is to hear and determine this case without the intervention of a jury, and the court having heard the evidence and argument of counsel is of opinion, and so adjudged, that plaintiff the Commonwealth of Kentucky recover of the defendant The Adams Express Com-
8 pany the sum of Sixty Dollars ($60.00) and the cost of this prosecution, and case is dismissed as to the defendant J. A. Owen, continued for process as to the defendant Wm. Hedden.

Knox Circuit Court, April Term, April 14th, 1905.

THE COMMONWEALTH, Pl'ff,
vs.
J. A. OWENS and WM. DEDDEN and ADAMS EXPRESS COMPANY, Def'ts.

Liquor.

This day came the defendant Adams Express Company by its counsel, C. W. Metcalf, filed written grounds and moved the court to set aside its findings and judgment herein and grant a new trial, but the court being advised, overruled said motion, to which defendant excepted, and prayed an appeal to the Court of Appeals, — was granted on conditions that the record in the case be lodged in the clerk's office of said court within sixty days from this date.
9 The defendant thereupon produced and filed its bill of exceptions, which was allowed by the court, and signed by the judge, and filed as part of the record in the case, together with the transcript of the testimony as extended by Mrs. Cora S. Johnson, official court stenographer, and properly certified as such, and attested by the judge of this court, which transcript was filed in open court, and ordered to be made a part of the record in this case to be used on appeal without being copied into same.

Knox Circuit Court.

1835.

COMMONWEALTH OF KENTUCKY
vs.
ADAMS EXPRESS COMPANY, ETC.

Motion & Grounds for New Trial.

The defendant Adams Express Company moves the court to set aside the finding and judgment herein and grant it a new trial:
1st. Because the facts in evidence show that the shipment of the

whiskey was received by the said defendant as a common carrier in Cincinnati, Ohio, in the usual course of business, and delivered directly to the witness, J. D. Main, as a common carrier in the
10 usual course of business in Barbourville, Kentucky, and was therefore covered by interstate commerce regulations.

2nd. Because the finding is against the law and evidence.

ADAMS EXPRESS COMPANY,
By C. W. METCALF, *Att'y.*

Indorsed: Filed April 14th, 1905. J. R. Jones, Cl'k.

Knox Circuit Court.

1835.

COMMONWEALTH OF KENTUCKY
vs.
ADAMS EXPRESS COMPANY.

Bill of Exceptions.

Be it remembered that on the calling of this case for trial the defendant appeared by attorney and demurred to the indictment, and the same having been considered by the court was overruled, to which the defendant Adams Express Company excepted. The reading of the indictment was waived, and the defendants, Adams
11 Express Company and J. A. Owens, thereupon entered a plea of not guilty, and a jury was waived by the attorneys for the Commonwealth and for the defendant, and the law and fact submitted to the court for finding and judgment. The Commonwealth introduced on its behalf J. D. Main and John Parker, as witnesses, and the defendant J. A. Owens, and no other testimony was heard by the court on the trial. The court, upon the testimony, found the defendant Adams Express Company guilty, and fixed the fine at $60.00, and judgment was entered accordingly. The defendant Adams Express Company filed written grounds and moved the court to set aside the finding and judgment and grant it a new trial herein, but the court overruled said motion, to which the defendant excepted, and prayed and has been granted an appeal to the Court of Appeals, and now tenders this as its bill of exceptions, which is allowed, and signed and ordered to be filed as part of the record.

H. C. FAULKNER, *Judge.*

Indorsed: Filed in open court April 14th, 1905. J. R. Jones, Cl'k.

12 Knox Circuit Court.

1835.

COMMONWEALTH OF KENTUCKY, Plaintiff,
against
ADAMS EXPRESS COMPANY, &c., Defendants.

Transcript of Evidence.

Be it remembered, that on the calling of this case for trial the following evidence was heard and proceedings had:

J. D. MAIN, being duly sworn, testified as follows, in behalf of the Commonwealth:

Q. Were you before the grand jury of this court at its December Term, 1904?
A. Yes, sir.
Q. Were you acquainted with J. A. Owens at that time?
A. Yes, sir.
Q. Where did you reside at that time, and for twelve months prior?
A. Here in Barbourville.
Q. Before that term of court did you get any liquor from Mr. Owens and the Adams Express Company in this county?
A. I got a box of whiskey there that was delivered by ex-
13 press.
Q. Where did you get it from?
A. The depot here in Barbourville.
Q. What quantity of liquor did you get at one time?
A. A box with four quarts in it.
Q. Was that in this county?
A. Yes, sir.
Q. Less than twelve months before the December term, 1904?
A. Yes, sir.
Q. Did you pay for the whiskey?
A. Yes, I paid the C. O. D. charges, $3.85, I believe.
Q. To whom did you pay the charges?
A. The agent.
Q. J. A. Owens?
A. Any agent that was at work there.
Q. From what parties did you get the whiskey?
A. I think the brand of the whiskey was called the White Oak, and there were envelopes in the box giving the number of a lock box at Cincinnati; they came there addressed to me with $3.85 charges.
Q. That was the C. O. D. charges?
A. Yes, sir.
Q. You paid that to the agent at the Barbourville depot?
A. Yes, sir.
14 Q. Was Mr. Owens, at that time, the depot agent at Barbourville?

A. Mr. Owens acted as agent part of the time and part of the time he was off having his eyes treated.
Q. Did you order the whiskey?
A. No, sir.
Q. Did you know it was going to be shipped to you?
A. I did not.
Q. Did you authorize any company to ship the whiskey there to you?
A. Did not.
Q. Did the Adams Express Company have any authority from you in any way to bring the whiskey there?
A. No, did not.
Q. Is the Adams Express Company an express company here in connection with the depot here at Barbourville?
A. Yes, sir.
Q. Where did you get the packages from, what part of the depot?
A. There was a private room in the express office in the depot.
Q. Got it out of the express office?
A. Yes, sir.
15 Q. Do you know how it came there?
A. No, I notified the company that was shipping it once or twice not to ship it to me.
Q. Who did you notify?
A. That lock box.
Q. The White Oak Distillery Company?
A. I think it was; I have an envelope in my office; I think the whiskey was branded White Oak Distillery Company.
Q. Did the box which you got come to the depot in Barbourville by express?
A. I don't know that I was ever there when it came on the car, but I got it out of the express office. I would find out it was there in my name, and I would get it.
Q. Did you have any talk with Mr. Owens about it?
A. Yes, sir.
Q. What did you say about it?
A. The only conversation I remember was, that he would not deliver the whiskey to any party that it was not addressed to. I did not know who shipped the whiskey.
Q. At the time you got this package out of the depot and turned the money over to Mr. Owens, were there any other packages of whiskey there in the express office?
A. Yes, sir.
16 Q. How many did you see?
A. I saw a good many stacked up there.
Q. About how many at one time?
A. I don't know, but several.
Q. And you saw them at several different times?
A. Yes, sir.
Q. Was there any other express office there in connection with the Barbourville depot except the Adams Express office at the time you got the package?

A. Not to my knowledge.
Q. You say there were four quarts?
A. That is what there is supposed to be.
Q. Did they come in bottles?
A. Yes, sir.
Q. Anything in the boxes except the quart bottles?
A. Only envelopes and blanks for orders.
Q. Have you any of those envelopes?
A. I think so. I notified them not to ship in my name.
Q. You notified them at the lock box in Cincinnati?
A. Yes, sir.
Q. Any of those letters ever returned to you?
A. No, they had my return on the envelope.
17 Q. Do you know what became of the $3.85 which you turned over to the agent of the Adams Express Company in the depot?
A. I do not.
Q. Do you know from where the whiskey was shipped except what you have stated?
A. Nothing, only what I have stated; I don't know anything about where it was shipped from.
Q. Did you get any information from Mr. Owens as to how the packages came into the depot?
A. He said they came by express, and the express charges must be paid.
Q. Was there anything on the bottle, any brand or anything on the bottle, by which you could tell from where the bottles came?
A. I don't remember exactly how the bottles read; there came different boxes and different brands, but it seems to me like it was the Whiye Oak Distillery Co., Covington, Kentucky.
Q. Was there anything in the envelope or order blank by which you could tell where the whiskey was manufactured?
A. No, the envelopes only gave the post office, Cincinnati, Ohio.
Q. Have you any of the bottles in which the whiskey was shipped from the White Oak Distillery Company?
18 A. Yes, sir.
Q. What other parties, if any, were at work in the office there at the time you got the whiskey about which you have been talking?
A. Mr. Joe Owens.
Q. Where is Mr. Joe Owens now?
A. He is a brother to Mr. John Owens, and is at the depot, I suppose; and probably Tom Finn, he worked there, too.
Q. Who is the William Deddin that is mentioned in this indictment?
A. I don't know.
Q. Did you have any transaction with him?
A. I don't know, I don't have any recollection of ever knowing a fellow by that name.

Cross-examination:

Q. Did you ever use any of those return envelopes in ordering any whiskey from those people?

A. Never did.

Q. Did you ever order any boxes of whiskey from those people?

A. I did not.

Q. Did you ever authorize any one to do it?

A. I did not.

19 Q. How did you get information that the whiskey was there?

A. Very often I would send by some one to know if it was there, and then I would go and get it. I notified them once, and also got Mr. Jesse Tuggle to notify them not to ship any more.

Q. After you found out the whiskey was there on various occasions you would go and take it out?

A. Yes, and pay for it. Me and Tom Wilson and Tom Gilbert notified the parties not to ship any more in my name.

Q. Did you ever refuse a box of whiskey that was shipped to you?

A. I don't know how many was shipped to me; I have taken out several boxes.

Q. About how many did you take out?

A. I don't know; I may have paid out twenty boxes. I don't remember how many, in the latter part of the year 1904 and the earlier part of the year 1905.

Q. How much did each box hold?

A. Four quarts is what they are presumed to hold.

Q. So that in about six months you have taken out about twenty boxes?

A. I said in the end of 1904 and the earlier part of 1905 I had received that many. I would very often get George Tie to

20 bring over the boxes; he would bring it with other express, and I would pay him the money for the express and 10 cents in addition.

Q. To whom did you pay that?

A. George Tie.

Q. He was not the agent at the depot?

A. No, he runs the street car.

Q. He was the drayman, delivering boxes?

A. Yes, he delivered express.

Q. You paid him ten cents for delivering packages from the depot?

A. Yes; $3.85 was what I paid at the depot, and $3.95 is what I paid him.

Q. Do you mean to say that you were buying this from the drayman?

A. No, sir.

Q. You mean to say you were buying it from the agent?

A. No, sir.

Q. What do you mean?

A. I mean that I paid the required charges as shown on the boxes.

Q. How came those people to ship you this whiskey?
A. I don't know, sir.
21 Q. You say that you took it out every time that it was shipped to you?
A. I did not say that. I said I had taken out several boxes, but don't know that I took out near all the boxes shipped, I don't think I did.
Q. Will you be certain about that?
A. That is simply my opinion.
Q. Did you ever order a box returned?
A. I notified the company not to ship any more to me.
Q. Did you ever order the agent there to return a box that was shipped to you?
A. It seems like I have, probably two years ago.
Q. Have you in the last six months?
A. No, I think not.
Q. In the last twelve months?
A. I will not be positive about that; I know that I never ordered the boxes from either of those companies; it is inferior whiskey.
Q. Yet you took the boxes out every time?
A. I don't think I took them all out.
22 Q. You will not swear that you took them all out that came in your name?
A. I don't know that I can confidently, but I feel pretty confident that I did not.
Q. Were those boxes labeled or directed to you, J. D. Main, Barbourville, Kentucky?
A. Yes, sir.
Q. Did you ever get a box from Mr. Owens, or any other agent of the Adams Express Company, that was not shipped to you?
A. Mr. Owens, as I told you awhile ago, said that he could only deliver boxes to the man to whom they were addressed.
Q. Did he or not deliver to you only the boxes which were addressed to you?
A. That is all I got; that is all Mr. Owens ever delivered to me.
Q. Did you always get this whiskey from the White Oak Distillery Company?
A. There came whiskey here from other companies.
Q. What companies?
A. I don't know, but the most of the whiskey came from the White Oak Distilling Company.
23 Q. From what other persons did you ever get any whiskey?
A. I cannot mention all I got whiskey from.
Q. I mean C. O. D. shipments since this last law was in force?
A. I have no recollection.
Q. Did you ever get any from the Lone Creek Distilling Company?
A. I don't know that company.
Q. Did you get any from Crigler & Crigler?
A. There came some boxes, but I did not order any.
Q. Did you get them?

A. I don't remember whether I got them out; the fact is, I generally get my whiskey from J. D. Dantz.
Q. How much have you gotten from J. D. Dentz?
A. I don't remember; before Christmas I have gotten two or three boxes.
Q. How much did you get before that?
A. I don't remember.
Q. As much as ten gallons?
A. I cannot tell.
Q. Have you gotten as much as five gallons?
A. I am pretty confident that I have gotten that much in six months.
Q. As much as ten gallons?
A. I think not.
24 Q. Making five gallons from J. D. Dentz and 20 boxes from these other people?
A. I don't want the stenographer to say that I got five gallons or twenty boxes, that is Mr. Metcalf's statement. I am confident that in 1904 and 1905 I got that many boxes, and gave the statement for those years. It has been some time since I have gotten any White Oak boxes; I don't know whether there is any there for me now or not.
Q. Did any person in town tell you whether there were boxes there?
A. Yes, Mr. Tom Wilson told me, and I would ask this drayman to see if any was there, and I would send for it, or go for it, when I wanted it, and pay for it, and I believe Mr. Owens has notified me a time or two of the express being there.
Q. You would go and get it?
A. Yes, sometimes.
(JUDGE:) You have some theory about how this whiskey came to be sent you?
A. I have not the least idea. I have heard that there was some fellows around here, especially one of the Wests, who would get these names and send them in there. Charley Tinsley told me that this fellow got $86.00 on boxes he had sent here.
25 Q. What West is that?
A. Some call him Charley Atkins, and some West; that is the way I understood the whiskey was shipped here by some fellow sending off the names; all I know about that us that I have heard it.

JOHN PARKER, called for the Commonwealth, being duly sworn, testified as follows:

Q. What position, if any, do you hold in Knox County?
A. County Court Clerk.
Q. How long have you held that position?
A. Seven years and a few months.
Q. How long have you been living in Knox county?
A. Thirty-three years.
Q. As clerk of the Knox county court have you in your custody or in the office of the clerk of Knox county court any record showing

whether or not there has been any local option election held in Barbourville, Knox county, at any time previous to 1904, prior to the December Term of this court, 1904?

26 At this point it is agreed by counsel for the Commonwealth and counsel for the defendant that heretofore, to-wit: some two years ago, there was an election in the city of Barbourville on the question as to whether or not spirituous, vinous and malt liquors should be sold therein by retail, which election was legal in every particular, and the vote thereon was by a majority against the sale of liquor in any manner in said town by retail, and by virtue of what is known as the local option law has been in force and was at the time of the action complained of. And by further agreement of the parties it is agreed that the defendant Adams Express Company is a joint stock company, and was at that time. It is further agreed at this point that the whiskey about which the witness testified was delivered by the Adams Express Company and received by it in its office in Cincinnati in the usual course of business as a common carrier, and carried by it to Barbourville, Kentucky, by the method commonly known as C. O. D.

The Commonwealth here rests.

27 J. A. OWENS, called for defendant, being duly sworn, testified as follows:

Q. You have heard the witness, J. D. Main, testify in reference to receiving a package of whiskey from the office of the Adams Express Company at Barbourville, at which place you were agent, by a method known as C. O. D. delivery; tell the court whether or not he did receive such whiskey?

A. Yes, he has received some.

Q. About how often has he received any?

Q. He has gotten several in the last year.

Q. Did you have anything to do with that whiskey being shipped to him?

A. No, I did not.

Q. Did you know anything about the fact that that whiskey was going to be shipped to him before it was shipped?

A. No, I did not.

Q. When was the first knowledge received by you that a C. O. D. package was in the care and custody of the Adams Express Company to be delivered to him?

A. When the box was put off of the train at Barbourville.

Q. Did you notify Mr. Main of the receipt of that package?

A. I don't believe I have; I don't believe I ever notified him.

28 Q. What is your custom with reference to notifying people about packages?

A. It is the rule of the company to notify the people in two or three days.

Q. Do you always do that?

A. Not always; the business is so heavy I have not time generally.

Q. Did Mr. Main come and receive these packages?
A. Yes; he received some himself, and some were sent down town to him.
Q. How many packages did Mr. Main receive?
A. I don't know.
Q. About how many?
A. I don't know; I suppose he got ten or fifteen boxes.
Q. Did you ever deliver to Mr. Main any whiskey which was not shipped to him?
A. No, I did not.
Q. Where was this whiskey which you delivered to him billed from?
A. Cincinnati.
Q. Do you know from whom that whiskey was received?
A. No, I do not; only from the C. O. D. labels.
29 Q. Now explain to the court how that whiskey was billed, what information you received from the *weigh*-bill, from whom it is received, and to whom the money goes?
A. The boxes come in with the express *weigh*-bill telling what amount was to be paid, from Cincinnati, Ohio, to Barbourville, Kentucky, and with that is the C. O. D. wrapper which the money goes back in; the wrapper in which we return the money after the package is delivered goes to the Distillery or the agent for the Distillery.
Q. Where were these collections which you made of Mr. Main returned to?
A. To Cincinnati.
Q. To what person?
A. Some of them, I believe, to the White Oak Distillery, and some to William Dedden.
Q. Can you produce one of the envelopes?
A. Yes, we have them at the office; we don't have any of Dedden's envelopes; he is out of business, I think.
Q. When did he go out of business?
A. I don't know that he is out of business, but I know we returned all his boxes that were not delivered.
30 Q. Did you ever deliver any whiskey to the witness, J. D. Main, which was accompanied by any *weight* bill from any point in this State—C. O. D. packages?
A. Never did.
Q. Did you or the Adams Express Company, or you as the agent of the Adams Express Company, have any arrangement with the White Oak Distillery Company or any other concern by which it would ship an open order of whiskey to Mr. Main or any other person?
A. No, I have not had any such arrangement as agent for the company.
Q. Have you had personally?
A. No, sir, I have not.

Cross-examination:

Q. You don't know what arrangement, if any, the company had?

A. No, I never had any notice of any arrangement.

Q. You don't know where the whiskey was manufactured, or where it was shipped from, except from the C. O. D. packages by which you returned?

A. I know the whiskey was shipped from Cincinnati to me, and that is where I returned the money.

31 Q. You don't know whether it was manufactured in Covington or some point in Kentucky and sent to Cincinnati and shipped back in this State?

A. No, sir.

Q. Do you know anything about William Dedden, the person who shipped this?

A. No, only the money I returned on his shipments.

Q. You don't know whether he is in connection with the White Oak Company?

A. No, sir.

Q. You don't know where the White Oak Distillery Company is located?

A. No, sir.

Q. At the time Mr. Main speaks of, you were the agent of the Adams Express Company, and in charge of their business here in Barbourville?

A. Yes, sir.

Q. And the money which he paid you you returned to William Dedden?

A. Yes, sir.

Q. You don't know how they happened to be sending the whiskey to him without an order?

A. No, I do not.

32 Q. About how many packages such as you delivered to him did you have in the depot at any one time during the year next before the December Term of this court, 1904?

A. We had several, as high as fifty at a time.

Q. How long has this whiskey package business been carried on by the Adams Express Company through the depot here at Barbourville?

A. As long as I have lived here—14 years.

Q. Is it yet being carried on by the Company?

A. Yes, sir.

Q. To how many different parties would there be packages of this whiskey in the depot at one time?

A. There would be quite a number sometimes.

Q. I understood you to say that you did not notify the parties of the packages being there?

A. I don't remember notifying them of the whiskey packages, they come in so fast I cannot notify them.

Q. Such an extensive business?

A. Yes, sir.

JUDGE: Is this delivery still going on?

A. Yes, sir.
33 Q. Still coming in?
A. Yes, sir.
Q. About how many C. O. D. packages are there in the depot at this time similar to what Mr. Main speaks of?
A. Ten or twelve, I believe.
Q. Is it not a fact that during the time you have been here as agent of the Company that whiskey dealers from other points outside of Knox county have carried on a sale of whiskey through the Adams Express Company here at Barbourville?
A. I don't know that there is anything of the sort.
Q. Have you not been delivering this whiskey regularly for the 14 years that you have been here?
A. Yes, sir.
Q. It has been going on from day to day and week to week?
A. Yes, sir.
Q. And in quantities less than five gallons?
A. Yes, sometimes.
Q. Mostly in gallon boxes, such as Mr. Main speaks of?
A. Yes sir.
Q. The Express Company's agent receives the money and returns it to the shipper?
A. Yes, sir.
34 Q. Has there been any whiskey handled at the depot except the whiskey that is shipped there from other points outside of Knox county?
A. No, sir.
Q. You handle no whiskey there except in that way?
A. No, sir.
Q. You don't know anything about William Dedden?
A. No, nothing except what we have got on our books.

Re-direct examination:

Q. You don't mean to say to the Commonwealth attorney by implication that there were any other C. O. D. packages in the depot from within the State?
A. No, sir.
Q. All the shipments which you deliver come from points outside of the State?
A. Yes, sir.
Q. Did you ever return any packages addressed to J. D. Main?
A. I believe I have.
Q. Since when?
A. I returned some a week or so ago, a package that remains on hand thirty days we return them.
35 Q. Did that ever occur before?
A. I don't remember of ever returning any before.

At the conclusion of the defendants' testimony the defendant Adams Express Company, by C. W. Metcalf its counsel, moved the court to find the defendant not guilty, upon the grounds that the

transactions embraced in the indictment were interstate commerce, and the court being advised, overruled said motion, to which the defendant objected and excepted; and thereupon the court delivered the following opinion.

Opinion and Judgment in Case #1835.

In all these cases it is shown by the evidence that the witness to whom the liquor was consigned made no order therefor, either through the agent, by letter or otherwise, to the company or person sending the shipment. It is shown in the evidence that the shipment was made C. O. D. from Cincinnati, Ohio, and in the regular course of business as far as the reception and shipment of the goods was concerned by the Adams Express Company and that there was never any contract between the buyer and the seller made in the
36 State of Ohio or anywhere else, except such as was made with the agent of the company in this State at the point of delivery. Counsel for defendant in the argument cited the case of the American Express Company, &c. *v.* State of Iowa, 196 U. S.; this is a very late case, and is strongly persuasive of the contention of the defendant. No case is cited under the Statute of this State, which Statute is commonly known as the Faris Law. Sub-section 4 of section 2557 B of Kentucky Statutes provides that all shipments of spirituous, vinous and malt liquors to be paid for on delivery, commonly called C. O. D. shipments, into any county, city, town, district or precinct where said act is in force shall be unlawful, and shall be deemed a sale of liquor at the place where the money is paid and the goods delivered; the carrier and his agent delivering and selling such goods shall be liable jointly with the vendor thereof. There is no question but that this section of the Statute of which it is *and* amendment are both in force in this county and the district in which this liquor was delivered.

I am of the opinion that the State has the power and should have the power as a police regulation to prevent this kind of ship-
37 ments. If I had any doubt on this subject, I think the facts in this case differentiate it from any case cited, or of which the court has knowledge.

It cannot be contended under the facts in this case that there was even a simulation of a contract between the buyer and the seller outside of this State; nor was there anything directly or indirectly tending to make the packages which were received in this case sales embraced by the interstate commerce. The defendant company claims that the shipment in this case was received in Cincinnati in the due course of business. It was claimed by the company that it had no knowledge of the fact that there was no contract between the seller and the buyer; that it first received the knowledge of this fact on the trial of this case, and so far as the evidence shows this is true; still, the court thinks that it should be bound in this case to know the facts that actually existed, and that it must be held to know the facts previously existing between the buyer and seller, if any; and even if the product delivered in this case was protected by

interstate commerce, still when the company, as in this case, becomes the shipper and deliverer for a company that has no
38 contract, the company then becomes a mere seller of liquor at the point of delivery. To hold otherwise, would be to allow this Company, through its office at Barbourville, to become a common retail dealer of liquor in our midst, and thus violate the law, and make it an exception to the general rule, which prevents other persons and corporations from selling liquor in our midst.

The Commonwealth does not insist on a verdict against the agent, and none will be rendered against the agent.

The judgment in this case will be for Sixty Dollars ($60.00).

And to this judgment the defendant excepts, and prays an appeal to the Court of Appeals, which is granted.

H. C. FAULKNER, *Judge.*

STATE OF KENTUCKY, *County of Knox, set:*

I, Cora S. Johnson, Official Stenographic Reporter for the Knox Circuit Court, certify that I took stenographic notes of the evidence in the above styled case, and that the foregoing pages of type-
39 written matter constitute a full, true, accurate and correct transcript of said notes when extended into longhand, together with the objections, exceptions and rulings of the court, and the opinion and judgment.

Given under my hand this, the 14th day of April, 1905.

CORA S. JOHNSON,
Official Stenographic Reporter,
Knox Circuit Court.

Examined and approved April 14th, 1905, by the trial judge.

H. C. FAULKNER, *Judge.*

Supersedeas Bond.

The bond is only required to be signed by the sureties.

1835.

ADAMS EXPRESS COMPANY, Appellant,
against
COMMONWEALTH OF KY., Appellee.

Upon an Appeal from a Judgment of Knox Circuit Court, Rendered 11th day of April, 1905.

Whereas, said appellant, Adams Express Company, has prayed an appeal from the Judgment of the Knox Circuit Court, rendered on the 11th day of April, 1905, against it in favor of the
40 appellee for the sum of Sixty Dollars, and the appellant desires to supersede the whole of the said judgment above mentioned:

Now, We, Adams Express Company, Principal, and C. W. Metcalf, its Surety, do hereby covenant to and with the appellee Commonwealth of Kentucky that the appellants will pay to the appellee all costs and damages that may be adjudged against the appellant on the appeal, and also that they will satisfy and perform the judgment above stated in case it shall be affirmed, and any judgment or order which the Court of Appeals may render, or order to be rendered by the inferior court, not exceeding in amount or value said judgment aforesaid.

Witness our hands, this 22nd day of April, 1905.

ADAMS EXPRESS COMPANY,
By C. W. METCALF, *Att'y.*
C. W. METCALF.

Attest:
J. R. JONES.

41 STATE OF KENTUCKY, *County of Knox:*

I, J. R. Jones, Clerk of the Circuit Court in and for the county and State aforesaid, certify that the foregoing eight pages of typewritten matter are a true and correct and complete transcript of the record and proceedings had in trial of the action lately pending in the Knox Circuit Court, wherein the Commonwealth of Kentucky was plaintiff, and the Adams Express Company and others were defendants, as appears in the records of my office.

Witness my hand this 21st day of April, 1905.

J. R. JONES, *Clerk.*

42 Be it remembered that on the 18th day of September, in the Court of Appeals, at the Capitol at Frankfort, the following order was entered:

"ADAMS EXPRESS COMPANY
v.
COM'LTH.

(5 cases.) Knox.

Came the appellant by counsel and filed grounds and moved the court to grant an oral argument herein, which motion is submitted.

The grounds for oral argument referred to in the foregoing order are in the following words and figures, to-wit:

Kentucky Court of Appeals.

No. 71.

ADAMS EXPRESS COMPANY, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Motion for Oral Argument.

The appellant moves the court for an oral argument of this case, on the ground that it involves a Federal Constitutional question not heretofore decided in Kentucky.

43 It presents the question whether a common carrier engaged in interstate commerce is amenable to the laws of Kentucky and guilty of selling liquor therein if it carries a shipment of liquor C. O. D. from the State of Ohio to the State of Kentucky, and there delivers it to the consignee who has not ordered it, when the fact of its not having been ordered is unknown to the carrier. It is a question similar to that discussed in American Express Company *v.* Iowa, 196 U. S., 133.

MAXWELL & RAMSEY,
Attorneys for Appellant.

And afterwards on the 20th day of September, 1905, at a Court of Appeals, at the Capitol at Frankfort, the following order was entered, to-wit:

"ADAMS EXPRESS COMPANY
v.
COM'LTH.

(5 cases.) Knox.

The court being sufficiently advised, appellant's motion for oral argument herein is sustained, and said cases are passed for oral argument to the next January term.

44 And afterwards, on the 9th day of March, 1906, at a Court of Appeals, at the Capitol at Frankfort, the following order was entered, to-wit:

"ADAMS EXPRESS COMPANY
v.
COM'LTH.

(5 cases.) Knox.

SAME
v.
SAME.

(3 cases.) Laurel.

The foregoing cases coming on to be heard, were argued by L. Maxwell, Jr., for the appellant, and N. B. Hays, Attorney General, for the appellee, and submitted.

And afterward, on the 27th day of April, at a Court of Appeals, at the Capitol at Frankfort, the following judgment was entered:

ADAMS EXPRESS COMPANY, Appellant,
vs.
COMMONWEALTH, Appellee.

Appeal from Knox Circuit Court.

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed,
45 and that the appellee recover of the appellant ten per cent. damages on the amount of the judgment superseded herein, which is ordered certified to said court.

It is further considered that the appellee recover of the appellant its costs herein expended.

And on said date the following opinion was delivered:

Court of Appeals of Kentucky, April 27, 1906.

(To be Reported.)

(Case #1835.)

ADAMS EXPRESS COMPANY, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from Knox Circuit Court.

Opinion of the Court by Judge Barker.

The appellant was indicted by the grand jury of Knox county, Kentucky, for a violation of the prohibition law prevailing
46 therein. The indictment contains much surplusage with reference to what is called the C. O. D. statute, and as to the manner in which the Adams Express Company received the whiskey said to have been sold by it in contravention of law. Stripped of all unnecessary verbiage, the indictment contains a statement sufficient to charge the defendant company with a sale of liquor by retail, in violation of the prohibition statute applicable to Knox county; and as to the unnecessary allegations, they may be dismissed from view under the shelter of the maxim *utile, per inutile non vitiatur.*

The defendant company pleaded not guilty, and the case was submitted to the court on the law and facts—the intervention of a jury being waived—resulting in an adverse judgment against it.

The evidence showed, for the Commonwealth, the delivery by the defendant's agent, J. A. Owens, to one J. D. Main, of a gallon of whiskey, for which he paid three dollars and eighty-five cents, which

the agent at once transmitted to the shipper of the whiskey in Cincinnati; also that Main did not order the whiskey, and did not know the name of the consignor, but it was shipped to him at Barbourville,
Knox county, Kentucky, from Cincinnati by the Adams Ex-
47 press Company, C. O. D. This is but a small part of a general system prevailing, by which unscrupulous dealers in whiskey undertake, through the facile aid of express companies, to evade the prohibition laws in effect in certain counties in the State, and retail liquor therein in violation of the laws forbidding such traffic. By this system the names of men accustomed to drink whiskey are obtained by the dealers, and then, without any order therefor, or any contract whatever, the whiskey in gallon packages is sent to various small towns throughout the prohibition counties, addressed to the parties whose names are thus acquired. The express company does not notify the involuntary consignee, but simply holds the whiskey in its ware-rooms, and the party in whose name the liquor has been expressed receives notice either by postal from the consignor, or by some local agent of his in the county, that there is an express package for him, and then, whenever the thirst for liquor becomes sufficiently strong to tempt him to pay the express charges and take it out of the express office, this is done. The name of the consignor is not known by the involuntary consignee, and the address for the return of the money is the number of a lock box in the Cincinnati post office. After the involuntary consignee becomes suffi-
48 ciently acquainted with the system existing between the consignor and the express company, he finds that a gallon of liquor is usually kept at the express office subject to his order and the payment of charges, and he goes there for it with the same confidence that he would go to an ordinary dealer.

The evidence in this case shows that, within six months next before the trial, J. D. Main had taken from the Adams Express Company's office at Barbourville, Kentucky, as many as twenty separate packages of whiskey of a gallon each, and the testimony of the express agent shows that he often had as many as fifty gallons of whiskey on hand at on time consigned to various parties under the same system. Frequently several parties club in and take out whiskey together, dividing it in proportion to the amounts paid in by each, it being a rigid rule of the defendant company never to deliver the whiskey to any person other than the named consignee. It was stipulated between the Commonwealth and the defendant, that the whiskey in question was shipped from Cincinnati in the ordinary course of the express business.

49 The first and crucial question in this case is, whether or not the shipment and delivery of the whiskey was an act of interstate commerce? If so, it may be conceded that the defendant should go acquit; if not, it is practically conceded, that the acts of the defendant constituted a sale of liquor in Knox County, in violation of the prohibition law.

We do not think the amendment of the prohibition law commonly denominated the "Farris" or "C. O. D." law, has any bearing upon

the merits of the offense under discussion. The learned counsel for appellant hinge the whole defense on the fact that the act of the express company constituted the carrying on of interstate commerce, and the C. O. D. Law, being an attempt to regulate interstate commerce, which admittedly is under the exclusive regulation of the Congress of the United States, is for that reason void. This may be conceded. However, if the C. O. D. amendment was stricken from the statute book entirely, it would not affect in any way the merits of the transaction under investigation as we see it. The prohibition statute, without the amendment, forbids, under penalty, the sale of liquor by retail in Knox county; but neither the statute itself, nor the amendment thereto, undertakes to regulate interstate com-
50 merce. No State statute can affect interstate commerce, and the legislature did not attempt so to do by that in question.

We do not agree to the proposition that the transaction, which took place between the express company and J. D. Main in Knox county, was interstate commerce. Nor do we agree with the Attorney General in his view of the effect of the Wilson Bill upon the transaction in hand. As we understand him, he insists, that, although the shipment from Cincinnati be conceded to have been a legitimate act of interstate commerce in its original inception, yet after the goods arrived in Barbourville, if kept over time in a wareroom, then the transaction ceases to be one of interstate commerce, and becomes one of local commerce. We do not understand the Wilson Bill, as construed by the Supreme Court of the United States, to have this effect upon a shipment of the kind under discussion. Without naming the decisions, or discussing them with minute particularity, we understand the Supreme Court to have decided in the various cases cited in the briefs of counsel, that, where whiskey is purchased in a foreign State, it may be shipped by the seller to the buyer, into a State where the sale of liquor is prohibited by law; that it is
51 interstate commerce unaffected by the local law until delivered to the consignee, and the mere lapse of time, or the particular place where the goods are kept until called for, have no effect to change the quality of the transaction so that it ceases to be interstate commerce before the delivery. If this were not true, then if the consignee happened to be absent from home, or refused to call for his goods promptly, that which was a legitimate transaction in its original inception would become vicious and illegal by the mere lapse of time occasioned by the negligence of the consignee. If the transaction be interstate commerce originally, it continues so until the goods are delivered into the hands of the consignee.

But was this transaction interstate commerce? No contract of purchase is even pretended to have been made in Cincinnati. So far as the consignor is concerned, he simply shipped his illegitimate goods into the State of Kentucky to a point where the prohibition law prevails, and through the instrumentality of the express company there made a sale to J. D. Main. No one disputes, or can dispute, that the transaction, so far as the consignor was concerned, was

illegitimate and in violation of the law. He shipped for-
52 bidden goods into a prohibition district of Kentucky for the chance of being able to sell it, after it reached its designation, to Main. So far as he is concerned, the transaction in substance is the same as if he had brought the whiskey himself to Barbourville, and there sold it to Main. This being true, the transaction was not interstate commerce.

The commonwealth proved facts which, of themselves, established the guilt of the defendant company. It showed the existence of the prohibition law in Knox county, the delivery of liquor by the defendant to Main, and the payment of the price by the latter to the company's agent. These facts constituted an offense under the prohibition laws prevailing at the place of sale, and the defendant is guilty unless it has a defense which takes the transaction from without the operation of the State statute. It seeks to do this by alleging that the transaction was interstate commerce. The burden to establish this fact is upon the defendant. There can be no doubt of the soundness of this proposition. When the Commonwealth has established facts which show the guilt of the accused, if the defendant seeks to avoid the legal effect of this evidence, it must do it to
53 the satisfaction of the court or jury, or else be condemned. Did the defendant show that the transaction, out of which grew the offense with which it stood charged, was interstate commerce? The answer to this must be in the negative. It simply showed that it received in Cincinnati, in the usual course of business, which means no more, as we understand it, than that the goods were shipped in the ordinary way, whiskey consigned to J. D. Main in Barbourville, Kentucky; but this does not constitute interstate commerce; unless there was a *bona fide* shipment to a real consignee in Barbourville, the transaction was not interstate commerce, but a mere simulacrum of interstate commerce. In this case there was no *bona fide* shipment of merchandise from Cincinnati to Barbourville, but there was an illegal sending of whiskey into Knox county through the instrumentality of the express company for the purpose of finding a buyer there. In its very substance, the unknown consignor, whose headquarters is a lock box in the Cincinnati post office, simply appointed the Adams Express Company as his agent to find for him a purchaser in Knox county for a gallon of whiskey on a given commission. The defendant cannot say that it did not know the transaction was an illegitimate one, or that it believed it
54 was a *bona fide* shipment. It must show in defense of its otherwise illegal act in Knox county, that the State law did not apply to it at that time, because what it did was in pursuance of an act of interstate commerce. Now, interstate commerce cannot be based upon fraud or chicanery; it must necessarily be a legitimate transaction. The constitution and statutes of the United States are not shields for criminals; nor do they furnish a means by which crime may be effectuated. The Supreme Court of the United States does not uphold criminal acts, or protect criminals from the consequence of their misdoings. The transaction which took place be-

tween Cincinnati and Barbourville bears the same resemblance to interstate commerce as the wares of the green-goodsman bears to the genuine money of the United States—both are mere counterfeits. As said before, in order to escape conviction, the burden was upon the defendant to show that its acts were in pursuance of a contract of interstate commerce.

In the case of State *v.* Robinson, 49 Maine, 285, four baskets of champagne were seized under the laws of the State, and the question arose, whether or not, they being in the original packages, were subject to seizure, and the question of interstate commerce was involved. It was said:

55 "It is not pretended, in the case at bar, that the wine was imported by Robinson. If he claimed the right to sell it on that ground, the burden of proof was on him to show that he was the importer. No evidence on that point was offered. The instructions given to the jury, that he had shown no right to sell, were correct; and the exceptions must be overruled."

The case of Commonwealth *v.* Zelt, 139 Pa. St. Rep., 615, in principle involved the same question as the Maine case above cited. The court, on the question in hand, said:

"The fourth assignment is not sustained. The fact that defendant Porter was the agent of an importer was a matter of defense, and the burden was upon him to establish it by competent evidence, to such an extent as to throw a reasonable doubt upon the Commonwealth's case. This is substantially what the court below said to the jury."

Suppose, instead of the defense being interstate commerce, it had been license, and the appellant had undertaken to defend the sale in question by showing that it was the agent of the seller, and

56 that the latter was duly licensed to carry on the business; would it be sufficient to show that it believed its principal was licensed, and would the court hear such evidence? On the contrary, in order to defend, would it not be imperative upon it to show, not that it honestly believed, but that it *was* the agent of a licensed dealer? In the case at bar the defendant undertakes to show that it was the agent of the consignor, and that it believed the consignor's acts were legitimate acts of interstate commerce. Is this a better excuse than the one supposed? We think not. Appellant cannot shelter itself under its common-law duty as a common carrier of goods. There is no common-law duty devolving upon a common carrier to act as the collecting agent of the consignor; that is a matter of private contract, and one which the carrier may enter into, or refuse, at its option. When it does make such a contract, it stands with reference to it just as any other agent. In Am. & Eng. Encyc. of Law, vol. 12, p. 553, on this subject it is said:

"There is no common-law duty devolving upon an express company to act as the collecting agent of the shipper. Such obligation arises only by contract, express or implied."

56½ Cox, Hill & Thompson *v.* Columbus & Western Railway Co., 91 Ala., 392; James McNichol *v.* Pacific Express Co., 12 Mo. App. Rep., 401.

But passing this, while there is no direct evidence upon which one could lay his finger and say this showed knowledge, or that showed knowledge on the part of the express company, that the business in which it was engaged was a criminal one, we think, taking the evidence as a whole, and looking at the circumstances from the point of view in Barbourville, there was enough to show that the defendant was bound to know that the consignors were carrying on, systematically, a criminal business, and that the names given as consignees to the various packages of whiskey shipped were fictitious. In other words, while there were real persons in Barbourville bearing the names used, these persons had no contract of purchase, but the whiskey was shipped in their names with a view of tempting them to purchase it after its arrival in Barbourville.

Let it be remembered that Barbourville is a small town, scarcely above the dignity of a village, although it is the county seat of Knox county. It is a matter of common knowledge, that in
57 a small town there are no secrets; every man knows every other man; what he does; how he conducts himself, and what are his habits. The system under consideration had been carried on a long time. Owens, the express agent, states that he has been at Barbourville fourteen years; that during that time shipments of whiskey have been received in the same way continuously. He admits that in no case did he ever notify any named consignee that there was a package for him. This tends to show that he expected the party to be notified in other ways. Large numbers of similar packages were held by him constantly. He rigorously enforced the rule not to deliver a package to any one except the consignee. This showed him to be a formalist, and that he knew the advantage of surrounding the transaction with every semblance of legality; to borrow one of Edmund Burke's fine phrases, the transaction was made "most iniquitously legal."

We do not believe it possible for an illegitimate business to be carried on through the express company on so large a scale, for so long a time, and especially where the remittances were to be made to a lock box, instead of to a named firm, without its being ascertained that the system was criminal. Viewing the whole
58 case, together with the large number of similar cases against the same defendant, involving the same facts, and which were all heard together, we are forced to the conclusion that the agents of the defendant corporation at Barbourville knew of the illegality of the system they were helping to conduct, and that the corporation itself was the accomplice, for pay, of the criminal consignors.

The question involved here is a most important one for the people among whom the offense was committed. The mountain counties of Kentucky are thinly populated, and the arm of the law is necessarily weak, and the passions of men correspondingly strong. We do not transcend the bounds of judicial conservatism in saying that a large number of the cases involving violent crimes which come to this court on appeal from that section of the State are directly caused by the use of whiskey. Largely influenced by this consideration, no doubt, the good people of a majority of the mountain counties

have sought to control crime by the enactment of prohibition laws, and the welfare of the whole community is bound up in the enforcement of these laws. It goes without saying, however, that
59 if, by the instrumentality of such transactions as we have under discussion, whiskey can be introduced and sold by retail through the aid of the express company, which makes itself the agent to deliver the spirits and collect the pay therefor, the law is reduced to a nullity. We do not believe that an express company can legitimately thus thrust the shadow of its greed between the people and their uplift.

The judgment is affirmed.

60 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the State of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Court of Appeals before you, or some of you, being the highest court of law or equity of the State in which a decision could be had in said suit between Adams Express Company, Appellant, and The Commonwealth of Kentucky, Appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty,
61 or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the 25" day of June, in the year of our Lord one thousand nine hundred and six.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

JOS. C. FINNELL,
Clerk of the Circuit Court of the United States, E. Ky. Dist.,
By J. W. MENZIES, *D. C.*

Allowed by—
J. P. HOBSON,
Chief Justice Kentucky Court of Appeals.

Filed Jun- 26 1906.

J. MORGAN CHINN, *Cl'k.*

62 Know all Men by these Presents, That we, Adams Express Company, as principal, and John D. Griffin, as sure*ties*, are held and firmly bound unto The Commonwealth of Kentucky, in the full and just sum of Five Hundred dollars, to be paid to the said The Commonwealth of Kentucky, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of June, in the year of our Lord one thousand nine hundred and six.

Whereas, lately at a Court of Appeals of the State of Kentucky, in a suit depending in said Court, between Adams Express Company, Appellant, and The Commonwealth of Kentucky, Appellee, a judgment was rendered against the said Adams Express Company, and the said Appellant having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Commonwealth of Kentucky, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within — days from the date thereof.

Now, the condition of the above obligation is such, That if the said Adams Express Company shall prosecute said writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

ADAMS EXPRESS COMPANY, [SEAL.]
LAWRENCE MAXWELL, JR. [SEAL.]
J. D. GRIFFIN. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Approved by—
J. P. HOBSON,
Chief Justice Ky. Court of Appeals.

[Endorsed:] Filed Jun- 26 1906. J. Morgan Chinn, Cl'k.

63 Court of Appeals of Kentucky.

ADAMS EXPRESS COMPANY, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from Knox County, No. 1841.

Appeal from Knox County, No. 1846.

Appeal from Knox County, No. 1861.

Appeal from Knox County, No. 1866.

Stipulation.

For the purpose of avoiding unnecessary writs of error from the Supreme Court of the United States, it is hereby stipulated and agreed between Adams Express Company and the Commonwealth, that the above entitled cases are substantially like the case of Adams Express Company, Appellant, *versus* Commonwealth of Kentucky, on appeal from Knox County, No. 1835, decided on the same day, towit: April 27, 1906; that a writ in said last mentioned case shall be sued out from the Supreme Court of the United States, and that the above entitled cases shall abide the decision of the Supreme Court of the United States in said case, and that the mandates of this court be stayed pending said decision of the Supreme Court of the United States, and that the same judgment shall be entered in these cases as shall be ordered by the Supreme Court of the United States in said case in which a writ of error is to be sued out, and that this stipulation shall be filed as part of the record in said case in the Supreme Court of the United States.

LAWRENCE MAXWELL, JR.,
Counsel for Adams Express Company.
N. B. HAYS, *Attorney General.*

64 THE COMMONWEALTH OF KENTUCKY,
The Court of Appeals, sct:

I, J. Morgan Chinn Clerk of the Court of Appeals of the Commonwealth of Kentucky, certify that the foregoing pages contain a full and complete copy of the record including the judgment and opinion of the court in the case of The Adams Express Company Appellant *v.* The Commonwealth of Kentucky Appellee, Appeal from the Knox Circuit Court, being case numbered 1835, as fully as same appears, from the records and files of my office.

And I further certify that there is hereto attached, the original Writ of Error from the Supreme Court of the United States, this day filed in this office, and also attached hereto a copy of the writ of error bond, as same appears from the original now on file in my office.

In testimony whereof, I have hereunto set my hand, and caused my official seal to be hereunto affixed.

Done at the Capitol at Frankfort, this the 26th day of June A. D. 1906.

[Seal Court of Appeals, Kentucky.]

J. MORGAN CHINN,
Clerk of the Court of Appeals of Kentucky.

65 Court of Appeals of Kentucky.

ADAMS EXPRESS COMPANY, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Assignment of Errors.

Adams Express Company on the writ of error from the Supreme Court of the United States, assigns as error—

That the transaction on account of which it was prosecuted and has been convicted was interstate commerce, and was not subject to regulation by the state of Kentucky, and that the statutes of Kentucky under which it was convicted are in conflict with the commerce clause of the constitution of the United States, as applied to interstate shipments.

LAWRENCE MAXWELL, JR.,
Counsel for Adams Express Company.

66 UNITED STATES OF AMERICA, *ss:*

To The Commonwealth of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the State of Kentucky wherein Adams Express Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. P. Hobson Chief Justice of the Court of Appeals of Kentucky, this 22nd day of June, in the year of our Lord one thousand nine hundred and six.

J. P. HOBSON.

Service acknowledged.
J. C. W. BECKHAM,
Governor of Kentucky.
NAPOLEON B. HAYS,
Attorney General of Kentucky.

Endorsed on cover: File No. 20,297. Kentucky court of appeals. Term No. 332. Adams Express Company, plaintiff in error, *vs.* The Commonwealth of Kentucky. Filed June 29th, 1906. File No. 20,297.